

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MAMIE WHYEE**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO: 11A-UI-03958-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/23/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 26.14(6) – Late Appearance

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 17, 2011, reference 01, that held she was discharged for misconduct on February 15, 2011, and benefits are denied. A hearing was held in Des Moines, Iowa on April 28, 2011. The claimant did not participate. Greg Holliday, Assistant Manager of Store Operations, and Attorney, Alice Rose Thatch, participated for the employer. Employer Exhibits 1 – 6 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on May 7, 2007, and last worked for the employer as a part-time courtesy clerk on February 15, 2011. The claimant received the employer female Dress & Grooming Policies.

The employer had counseled the claimant on numerous occasions about her job performance. It issued written warnings for insubordination on August 20 and attendance on November 20, 2010. The claimant served one-week suspensions and was put on notice that a further policy violation would result in termination.

The employer dress code prohibits wearing jeans. When claimant wore jeans to work on February 15, 2011, she was terminated for the policy violation in light of the prior discipline.

Although claimant requested an in-person hearing, she failed to timely appear for it, and the record was closed. After the record was closed, the local receptionist advised that a department representative had called to say the claimant had gone to a department location on Grand Avenue, and she had been re-directed to the hearing site at 150 Des Moines Street that is listed on the hearing notice. The claimant arrived at 3:31 p.m.

The claimant stated she drove by the 150 Des Moines Street location but failed to recognize the building as the hearing site. The department building has a large front yard sign that identifies it as Iowa Workforce Development and the entrance to it shows the number 150 above the front entrance. The claimant had her hearing notice in hand when she appeared that is a document could shown to any department representative as to the location of the hearing site.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on February 15, 2011, for repeated violations of company policy.

The claimant knew the employer dress code policy due to receipt of it. The dress code violation in light of the prior warnings and suspensions constitutes job disqualifying misconduct.

871 IAC 26.14(6) provides:

(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

The administrative law judge concludes the failure of the claimant to arrive at the correct hearing location was based on her failure that is not a good cause to reopen the record. While the department has a building located on Grand Avenue, the hearing notice provides the correct address for the hearing location on Des Moines Street.

**DECISION:**

The department decision dated March 17, 2011 reference 01 is affirmed. The claimant was discharged for misconduct on February 15, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs